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CLERK U.S. DISTRICT COURT  
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10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION**  
12

13 MICHAEL ANTHONY MOORE, an  
14 individual,

15 Plaintiff,

16 v.

17 ROBERT KIRKMAN, an individual;  
and ROBERT KIRKMAN, LLC, a  
18 Kentucky limited liability company,

19 Defendants.  
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21  
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23  
24  
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Case No. 2:12-cv-06811-R-FFM

**FIRST AMENDED COMPLAINT  
FOR DECLARATORY RELIEF**

**DEMAND FOR JURY TRIAL**

Judge: Hon. Manuel L. Real  
Date Filed: August 7, 2012  
Trial Date: None

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1 Plaintiff Michael Anthony Moore ("Moore" or "Plaintiff") brings this action  
 2 against Defendants Robert Kirkman ("Kirkman") and Robert Kirkman, LLC  
 3 ("Kirkman LLC"), as follows:

#### 4 NATURE OF THIS ACTION

5 1. Moore is an artist who co-created the following works with comic book  
 6 writer Kirkman: the comic book series entitled *The Walking Dead*; the comic book  
 7 series entitled *Brit*; the comic book series entitled *Battle Pope*; a potential comic book  
 8 series entitled *Dead Planet*; and a potential comic book series entitled *My Name is*  
 9 *Abraham* (collectively, the "Works"). Each of these Works was prepared by Moore  
 10 and Kirkman with the intention that their contributions be merged into inseparable or  
 11 interdependent parts of a unitary whole. As such, Moore and Kirkman were thus joint  
 12 authors and co-owners of the copyrights in these Works under the Federal Copyright  
 13 Act.

14 2. Kirkman is a proud liar and fraudster who freely admits that he has no  
 15 qualm about misrepresenting material facts in order to consummate business  
 16 transactions, and it is precisely that illicit conduct which led to the present lawsuit  
 17 (and to Kirkman's business "success" generally). In 2005, Kirkman and his agents  
 18 devised a scheme to fraudulently induce Moore to assign his copyright interests in the  
 19 Works to Kirkman's alter-ego limited liability company, Kirkman LLC. Based on a  
 20 series of false promises, false representations and material omissions, Kirkman and  
 21 his agents convinced Moore to enter into a written "Assignment and Release  
 22 Agreement" dated September 29, 2005 (the "Assignment") with Kirkman and  
 23 Kirkman LLC, under which Moore assigned his copyrights in the Works to Kirkman  
 24 LLC.

25 3. Further, even if the Assignment was valid (it is not), Kirkman and  
 26 Kirkman LLC have also materially failed to perform their payment, reporting and  
 27 accounting obligations thereunder. Moore's fraudulent inducement, breach of  
 28 contract and other related claims are the subject of a pending California state court

1 action in Los Angeles Superior Court, styled *Moore v. Kirkman, et al.*, Case No.  
2 BC478730 (the "State Court Action").

3 4. Through the State Court Action, Moore seeks, among other things,  
4 rescission of the Assignment and the return of his co-author copyright interests in the  
5 Works. However, possibly because of the animosity engendered by the filing of the  
6 State Court Action, Kirkman now baselessly denies that Moore jointly authored the  
7 Works with him. Moore's status as a joint author and co-owner of the Works will  
8 impact the damages analysis in the State Court Action. Accordingly, Moore seeks a  
9 declaratory judgment by way of this action that he is a joint author of *The Walking*  
10 *Dead*, *Battle Pope*, *Brit*, *Dead Planet*, and *My Name is Abraham* and holds an  
11 undivided ownership interest in the entire work for each respective title, including all  
12 contributions contained therein.

### 13 PARTIES

14 5. Moore is an individual residing in the State of Indiana, County of  
15 Dearborn.

16 6. Kirkman is an individual who, on information and belief, resides in the  
17 State of California, County of Los Angeles.

18 7. Kirkman LLC is a Kentucky limited liability company with its principal  
19 place of business located in the State of California, County of Los Angeles. Kirkman  
20 is Kirkman LLC's sole member and manager.

21 8. On information and belief, Defendants are, and at all times mentioned  
22 herein, were, the agents, servants and/or employees of each of the other Defendants,  
23 and each of them was acting within the scope of its, his or her authority as the agent,  
24 servant and/or employee of each other. On information and belief, Defendants  
25 performed the acts and conduct herein alleged directly, aided and abetted the  
26 performance thereof or knowingly acquiesced in, ratified and accepted the benefits of  
27 such acts and conduct, and therefore each of the Defendants is liable to the extent of  
28 the liability of Defendants as alleged herein; consequently, all Defendants are jointly

1 and severally liable to Moore for the damages sustained as a proximate result of their  
2 conduct.

3 9. On information and belief, at all times herein material, each Defendant  
4 was completely dominated and controlled by its co-Defendants and each was the alter  
5 ego of the other. Whenever and wherever reference is made in this Complaint to any  
6 conduct by Defendant or Defendants, such allegations and references shall also be  
7 deemed to mean the conduct of each of Defendants, acting individually, jointly and  
8 severally. Whenever and wherever reference is made to individuals who are not  
9 named as Defendants in this Complaint, but were employees and/or agents of  
10 Defendants, such individuals at all relevant times acted on behalf of Defendants  
11 named in this Complaint within the scope of their respective employment.

### 12 **JURISDICTION AND VENUE**

13 10. This action arises under the copyright laws of the United States, 17  
14 U.S.C. §§ 101, et seq., and the Declaratory Judgment Act, 28 U.S.C. §§ 2201, et seq.  
15 This Court has jurisdiction under 28 U.S.C. §§ 1331, 1338, 2201 and 2202.

16 11. Venue lies in this District under 28 U.S.C. §§ 1391(b) and (c).  
17 Defendant Kirkman is a resident of this District. Defendant Kirkman LLC is deemed  
18 a resident of this District as it maintains its principal place of business in Los Angeles  
19 County, State of California, and thus is subject to personal jurisdiction in this District.  
20 Further, as explained in further detail below, a substantial part of the events giving  
21 rise to this action occurred in this District and a substantial part of the property that is  
22 the subject of this action is situated in this District.

### 23 **GENERAL ALLEGATIONS**

#### 24 **The Joint Authorship Of The Works**

25 12. The Works in this action consist of several comic book/graphic novel  
26 series entitled, respectively, *The Walking Dead*, *Brit*, *Battle Pope*, and the potential  
27 comic book series entitled *Dead Planet* and *My Name is Abraham* (collectively, the  
28 “Works”).

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1           13. The general concept for the Works was conceived in or around the early  
2 2000's.

3           14. At the outset, the preconcerted common design was for Moore and  
4 Kirkman to collaborate to turn these general concepts into finished comic books,  
5 expressing the general ideas through the collaborative combination of artwork and  
6 accompanying text.

7           15. Moore and Kirkman eventually jointly authored the Works, with Moore  
8 creating the artwork and Kirkman providing the accompanying text.

9           16. Moore and Kirkman intended that their respective contributions be  
10 merged into inseparable and/or interdependent parts of a unitary whole.

11           17. The co-creation process of the Works was a collaborative, "give-and-  
12 take" effort by both Moore and Kirkman – with the two co-creators bouncing ideas  
13 back and forth.

14           18. Each party contributed intellectual modification to the Works and neither  
15 party worked exclusively at the other's direction or on a "work-for-hire" basis.

16           19. Moore created the artwork for the first six issues of *The Walking Dead*,<sup>1</sup>  
17 several issues of *Brit* and several issues of *Battle Pope*.

18           20. Aside from jointly masterminding with Kirkman the foundational  
19 elements of the series, Moore's original artwork provided, among other things, the  
20 "look" and "feel" of the Works – a critically important element in intensely visual  
21 works such as comic books.

22           21. In particular, in the case of *The Walking Dead*, Moore's vision has been  
23 utilized and drawn upon extensively in subsequent comic issues and in subsequent  
24 motion picture adaptations of the comic book series.

25 **Kirkman Repudiates Moore's Copyright Interests In *The Walking Dead***

26           22. Despite Moore and Kirkman's co-authorship, Kirkman subsequently  
27 repudiated Moore's copyright ownership of the Works, in particular as to *The*

28 <sup>1</sup> Moore also created the cover artwork for several subsequent issues of *The Walking Dead*.

1 *Walking Dead*.

2 23. The original solicitations of the first several issues of *The Walking Dead*  
3 listed Moore and Kirkman as co-copyright owners of the comic. However, when the  
4 comic subsequently was printed, it was revealed that Kirkman had surreptitiously  
5 removed Moore's name as a copyright owner, so that the final print issues of *The*  
6 *Walking Dead* listed Kirkman as the sole owner.

7 24. Because Moore's name had been listed as a co-owner in the proofs of the  
8 work sent to the publisher, Moore had no reason to confirm or double-check that his  
9 name was also listed in the printed issues of the works.

10 25. In the State Court Action, Kirkman claims that he made Moore aware of  
11 his repudiation of Moore's co-authorship of the Works in 2005.

12 **Kirkman Fraudulently Induces Moore To Assign His Copyright Interests In The**  
13 **Works**

14 26. In September of 2005, shortly after the repudiation of Moore's co-  
15 authorship status, Kirkman was attempting to license television and theatrical rights to  
16 *The Walking Dead*. Kirkman and Kirman LLC, directly and through their agents and  
17 representatives, told Moore (directly and through his representative) that there was a  
18 "pending," "serious," "attractive," "promising" "deal with a television network" for  
19 *The Walking Dead*; that the deal was time sensitive and in danger of being lost if not  
20 concluded quickly; and that Kirkman would not be able to complete that deal unless  
21 Moore immediately assigned all of his interest in *The Walking Dead* and the other  
22 Works to Kirkman.

23 27. Kirkman, Kirkman LLC and their agents prepared the Assignment and  
24 told Moore that if he did not immediately sign it, the aforementioned television deal  
25 would "go away." Kirkman promised Moore that he would receive more money by  
26 entering into the Assignment because Kirkman would be able to sell the television  
27 and theatrical rights to the Works.  
28

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1           28. Initially, Moore was reluctant to enter into the Assignment. Moore had  
2 put a great deal of effort and consideration into bringing the characters in the Works  
3 to life, and creating the artwork that would serve as the Works' visual worlds.

4           29. Kirkman, through his agents and representatives, told Moore that not  
5 entering into the Assignment would cause the deal to "go away" and that no one  
6 would receive money from television rights if Moore did not immediately assign  
7 away his copyright ownership in the Works. Kirkman promised to pay Moore  
8 royalties and provide accurate and regular accountings.

9           30. Not wanting to be responsible for "killing the TV deal," Moore signed  
10 the Assignment, agreeing to transfer his copyright interests in the Works in exchange  
11 for an income stream of diminished royalties.

12           31. On information and belief, Kirkman never intended to pay Moore the  
13 proper royalties and never intended to provide accurate accountings. Moreover,  
14 Moore has since learned through discovery in the State Court Action that, in reality,  
15 there was no television deal on the table that was in any way dependent upon Moore  
16 relinquishing his copyright interests in *The Walking Dead*.

17           32. On information and belief, Defendants misrepresented this fact to Moore  
18 for the purpose of swindling Moore's copyrights as a co-creator of *The Walking Dead*  
19 and inducing him to enter into the Assignment.

20 **The State Court Action**

21           33. After numerous breaches of the Assignment by Kirkman, including  
22 failure to properly pay Moore his royalties and to provide the required accountings,  
23 Moore filed the State Court Action on February 9, 2012. In the State Court Action,  
24 Moore alleged various causes action against Kirkman and Kirkman LLC, both for the  
25 various breaches of the Assignment and also for fraudulent inducement as to entering  
26 into the Assignment in the first place. Accordingly, for the breach of contract claims,  
27 Moore seeks appropriate damages and for the fraudulent inducement claims, Moore  
28 seeks, among other things, rescission of the Assignment and a return of his copyright

1 interests in the Works.

2 34. If Moore obtains rescission of the Assignment in the State Court Action,  
3 the respective copyright interests of both Moore and Kirkman will be returned to their  
4 existing state prior to execution of the Assignment (i.e., Moore and Kirkman as co-  
5 authors of the Works). Moore will then pursue his rights as a co-owner to proceeds  
6 generated from the Works. Because Kirkman and Kirkman LLC assert that Moore is  
7 not a co-author of the Works, there exists an actual controversy between Moore and  
8 Defendants. Accordingly, in order for the State Court to properly award the correct  
9 amount of money due and owing to Moore resulting from Moore's returned copyright  
10 interests, and because Defendants now dispute Moore's co-authorship status, Moore  
11 requires a judicial determination that he is a co-author of the Works.

#### 12 **FIRST CLAIM FOR RELIEF**

13 **(Declaratory Relief – 28 U.S.C. §§ 2201, *et seq.*; 17 U.S.C. §§ 101, 201(a))**

14 35. Moore incorporates herein by reference each and every allegation  
15 contained in paragraphs 1 through 34, as though set forth in full.

16 36. An actual controversy exists between Moore, on the one hand, and  
17 Defendants Kirkman and Kirkman LLC, on the other hand, regarding Moore's co-  
18 authorship copyright interests in the Works. Moore and Kirkman jointly created the  
19 Works with the preconcerted common design to render the Works into finished comic  
20 books, expressing Kirkman's general concepts through both the comic artwork,  
21 contributed by Moore, and the accompanying text, contributed by Kirkman. Moore  
22 and Kirkman intended that their respective contributions be merged into inseparable  
23 and/or interdependent parts of a unitary whole. Moore and Kirkman each contributed  
24 intellectual modification to the Works and neither party worked exclusively at the  
25 other's direction or on a "work-for-hire" basis. Moore contends that he is a co-author  
26 of the Works. Kirkman disputes that Moore is a co-author of the Works.

27 37. Accordingly, Moore is entitled to a declaratory judgment that he is a  
28 joint author under 17 U.S.C. §§ 101 and 201(a), entitled to all rights and benefits of



1 the attendant, undivided copyright interests, of the following works:

- 2 a. *The Walking Dead*;
- 3 b. *Battle Pope*;
- 4 c. *Brit*;
- 5 d. *Dead Planet*; and
- 6 e. *My Name is Abraham*

7 **PRAYER FOR RELIEF**

8 Wherefore, Moore hereby requests that this Court:

9 1. Enter an order pursuant to 28 U.S.C. § 2201, *et seq.*, and other applicable  
10 law, declaring that Moore is a joint author of *The Walking Dead*, *Battle Pope*, *Brit*,  
11 *Dead Planet*, and *My Name is Abraham* and holds an undivided ownership interest in  
12 the entire work for each respective title, including all contributions contained therein.

13 2. Award such other and further relief as this Court deems just and proper.

14  
15 Dated: August 9, 2012

EARLY SULLIVAN WRIGHT  
GIZER & McRAE LLP

16  
17  
18 By: 

19 DEVIN A. McRAE  
Attorneys for Plaintiff  
20 MICHAEL ANTHONY MOORE  
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**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands trial by jury of all issues so triable.

Dated: August 9, 2012

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By: 

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MICHAEL ANTHONY MOORE

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